

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

RYAN AUSTIN,

Plaintiff,

v.

MIKE FELDER, HEATHER
PINSON JAMISON T. WOODY,
and AMANDA H. MOORE,

Defendants.

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Case No. 1:08-cv-01189-JDB-egb

REPORT AND RECOMMENDATION

Before this Court is Defendants' Second Motion for Contempt [D.E.40] filed February 3, 2010. Plaintiff is pro se. This matter was referred to the Magistrate Judge for a report and recommendation and/or determination [D.E. 41].

Originally, Plaintiff filed this lawsuit [D.E.1] on August 5, 2008 while incarcerated. The scheduling order was entered on April 15, 2009 [D.E.18]. Plaintiff then submitted a change of address notice to the Court Clerk that he had moved his residence to Savannah, Tennessee [D.E.20]. Defendants filed a Motion to Compel [D.E.24] seeking Plaintiff's response to discovery on July 15, 2009, which was granted on September 29, 2009 [D.E.30]. Defendants, on November 11, 2009 filed a Motion for Contempt, and this Court held a status conference with parties, resulting in the Court ordering Plaintiff to respond to all interrogatories and requests for production of documents by January 15, 2010 [D.E. 35]. According to Defendant's counsel, Plaintiff has not responded to discovery, although he has provided a medical release. Defendants have filed their Second Motion for Contempt seeking, *inter alia*, dismissal of this case.

The day before filing this motion, Defense counsel attempted to consult with Plaintiff as required by Local Rule 7.2 (a) (1) (B). Counsel indicates she called the telephone number Plaintiff previously had provided and spoke with a person who identified herself as Plaintiff's mother. She advised Counsel that Plaintiff was receiving treatment in a drug and/or alcohol facility for one year and was unavailable for consulting. On April 13, 2010, Plaintiff filed a letter with the Court Clerk indicating a change of address to prison, and in effect, asking for additional time to re-collect his files and to respond to discovery [D.E.42].

Plaintiff has failed to obey two orders of this Court: the September 29, 2009 order compelling him to respond to discovery and the December 21, 2009 order during the status conference in which he was present by telephone. This Court recommends, pursuant to Fed. R. Civ. P. 41 (b), that Plaintiff's lawsuit be dismissed.

Respectfully submitted,

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: April 14, 2010

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.